

COURTROOM MINUTE SHEET

DATE 11-23-09

CIVIL NO. CIV-07-439 -F

Basem M. Hussein, M.D. -vs- Duncan Regional Hospital, et al.

COMMENCED 10:00 ENDED 11:25 TOTAL TIME 1 hr. 25 min.

PROCEEDINGS Motion hearing

JUDGE STEPHEN P. FRIOT DEPUTY LORI GRAY REPORTER TRACY WASHBOURNE

PLF COUNSEL Alexander Bednar, Monty Delluomo

DFT COUNSEL Glen Huff, Denise Canada, Gregg Lytle

ENTER AS ABOVE: The court hears arguments of counsel. Plaintiff's Motion to Set Aside Judgment and for Sanctions (doc. no. 354) and Plaintiff's Emergency Motion to Continue Trial Date and Reopen Discovery (doc. no. 359) are **DENIED** for the reasons set forth in the defendants' responses. The trial will not be continued, and discovery will not be reopened. Plaintiff's Motion to Allow Plaintiff Use of Defendant's Discovery Responses at Trial to Prove Absence of Fact, Due to Defendants' Failure to Properly and Timely Supplement Discovery and to Impeach Defendants' Testimonies (doc. no. 367) is **DENIED**, for the reasons set forth in detail on the record. Plaintiff's Emergency Motion in Limine to Exclude Documents Bearing Death Study Stamp Imprints (doc. no. 383) is **DENIED**. Parties may file a proposed limiting instruction regarding the stamp imprints not later than 5:00 PM on 11/25/09. Plaintiff's Motion for Leave to File Response [Out of Time] to Defendants' Supplemental Motion in Limine, or in the Alternative, Evidentiary Brief as to Evidence of Due Process or HCQIA Violations (doc. no. 408) is **GRANTED**. Plaintiff's late filed Objection and Response (doc. no. 407) is accepted. Defendants' Motion

to Strike Plaintiff's Objection and Response to Defendants' Supplemental Motion in Limine, or in the Alternative, Evidentiary Brief as to Evidence of Due Process or HCQIA Violations (doc. no. 409) is **DENIED**. Defendants' Supplemental Motion in Limine, or in the Alternative, Evidentiary Brief as to Evidence of Due Process or HCQIA Violations (doc. no. 358) is **GRANTED**, for the reasons set forth in detail on the record. Defendants' Motion for Protective Order (doc. no. 352) is **STRICKEN AS MOOT**. Defendants' Motion for Protective Order (doc. no. 406) is **GRANTED** for the reasons set forth in paragraphs 2-5 of the motion. The court **RESERVES RULING** on Plaintiff's Application for Spoliation Instruction (doc. no. 376), but the court is skeptical as to whether a spoliation instruction is appropriate. The court will enter a modified version of the proposed order approving the Final Pretrial Report, making clear that a due process claim will not be part of this trial.